

Hon. Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DEMETRIUS BERTRAND DICKERSON,
SR.,

Appellant,

vs.

MERCHANTS CREDIT CORPORATION,

Appellee.

District Court No. 2:19-cv-00143-TSZ

Bankruptcy/Adversary No 19-S002

Related Case: No.: 12-11284- MLB

APPELLEE'S DESIGNATION OF
ADDITIONAL ITEMS TO BE
INCLUDED IN THE RECORD

Pursuant to Fed.R.Bankr.P. 8009(a)(2), appellee Merchants Credit Corporation ("Merchants"), designates the following additional items to be included in the record on appeal

I. ADDITIONAL DESIGNATION OF RECORD

Dkt #	Name of Document	Date
Tr. Ex.		
17	Withdrawal and Substitution of Attorney	06/26/18
50	Response to Motion for Order Permitting Supplemental Briefing Nunc Pro Tunc	10/12/18
64	Order Allowing Brief Nunc Pro Tunc	10/25/18
85	Notice of Expert Witness Disclosures	11/21/18
87	Witness & Exhibit Summary for Evidentiary Hearing	12/07/18

APPELLEE'S DESIGNATION OF ADDITIONAL
ITEMS TO BE INCLUDED IN THE RECORD - 1
2:19-cv-00143-TSZ Bankruptcy/Adversary No 19-S002
6481916.doc

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1 **II. APPELLEES' ALTERNATE STATEMENT OF ISSUES ON APPEAL**

2 Merchants hereby restates the issues to be presented on appeal as follows:

3 1. Whether the bankruptcy court correctly denied the debtor's motion to award
4 sanctions, under the great weight of applicable legal authority, where substantial evidence in
5 the record supported the following points:

- 6 a. Merchants Operations Manager, Carol Taylor, provided unrebutted testimony
7 that Merchants relied on advice of a former long-time outside attorney, who
8 provided inaccurate information on whether a non-debtor spouse's wages can be
9 garnished to recover a pre-marital individual debt; and where such
10 understanding was also shared by the debtor's first attorney who communicated
11 with Merchants and agreed to such garnishment;
- 12 b. Merchants Compliance Officer, Alex Sandoval, provided unrebutted testimony
13 that almost all written policies used by Merchants were taken from model
14 policies prepared by a leading trade organizations for collection agencies, which
15 provide an industry standard, none of the policies address the highly unusual
16 situation that occurred here, and Merchants has adopted a new policy that will
17 prevent what occurred in this case from occurring again;
- 18 c. Merchants Collection Manager, Scott Wiswall, provided evidence from
19 collection notes, correspondence, telephone call transcripts and its prior
20 counsel's advice from 2012 that, when Merchants issued the Writ of
21 Garnishment in 2018, the individuals in the company acted under a good faith
22 belief that they were not violating the discharge injunction.
- 23 d. Merchants current in-house counsel, Jason Woehler, provided testimony that
24 debtor's counsel did not send her demand letter to him directly, despite their
25 having prior cases together and her knowledge of his email address and phone

1 number; that only a snail-mail letter was sent to an officer of the company, that
2 Mr. Woehler was out of town for a couple of weeks when the letter arrived, that,
3 if it had been directed to him, he did not recall receiving it; that when the motion
4 for sanctions was filed without further follow up or warning, Merchants
5 immediately retained an outside attorney to handle the specialized bankruptcy
6 matter, and that Merchants released the garnishment after the outside bankruptcy
7 attorney indicated it was appropriate to do so.

8 2. Whether it is always the debtor's initial burden to show, not just that a discharge
9 injunction was violated, but that the creditor was aware that its actions would violate the
10 discharge injunction.

11 3. Whether the bankruptcy court properly determined the company's good-faith
12 belief through the testimony of the company's officers, where a company can only act through
13 such individuals. And, if a court cannot determine good faith by the testimony of its officers,
14 then whether a court can ever determine a company's intentions regarding a violation, so that a
15 debtor can never show an intentional violation of the discharge injunction.

16 DATED this 21st day of February, 2019.

17 LEE SMART, P.S., INC.

18 By: /s Marc Rosenberg

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CERTIFICATE OF SERVICE

I hereby certify that on the date provided at the signature below, I electronically filed the preceding document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following individual(s):

Ms. Christina Henry chenry@hdm-legal.com

Mr. Jason D. Anderson jason@alkc.net

James E. Dickmeyer jim@jdlaw.net

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Respectfully submitted this 21st day of February, 2019.

LEE SMART, P.S., INC.

By: s/ Marc Rosenberg
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